

**Dzerzhyn District Court of Kharkiv****RESOLVED**

Case No. 638/5519/23

Proceedings No. 1-kp/638/1372/23

Ukhvalaimenem of Ukraine

On November 8, 2023, the Dzerzhinsky District Court of Kharkiv, consisting of:

the presiding judge with the participation of: the secretary of the court session, the prosecutor, the accused's defender, the translator - PERSON_1 , -PERSON_2 , -PERSON_3 , -Lira Lopez PERSON_4 , -PERSON_5 , -PERSON_6 ,

having considered in a court session in the courtroom in Kharkiv the petition of the prosecutor of the Kharkiv Regional Prosecutor's Office PERSON_7 to extend the term of the preventive measure in the form of detention in criminal proceedings, entered in the Unified Register of Pretrial Investigations under No. 22022220000000618 of April 12, 2022, in relation to the accused

PERSON_8 , INFORMATION_1 , a citizen of the Republic of Chile and the Federal Republic of the United States of America, a native of Los Angeles, California, United States of America, married, officially unemployed, who has two children, actually lives at the address: ADDRESS_1 , not previously convicted,

in the commission of criminal offenses provided for in Part 2 of Art. 436-2, Part 3 of Art. 436-2 of the Criminal Code of Ukraine,-

INSTALLED:

Since June 7, 2023, in the proceedings of the judge of the Dzerzhinsky District Court of Kharkiv PERSON_1, there is an indictment in criminal proceedings entered in the Unified Register of Pretrial Investigations under No. 22022220000000618 dated April 12, 2022 against PERSON_8, who is accused of committing criminal offenses provided for in Part 2 Art. 436-2, Part 3 of Art. 436-2 of the Criminal Code of Ukraine.

On September 12, 2023, at a court hearing, the prosecutor filed a motion to extend the preventive measure in the form of detention for a period of 60 days, without setting bail.

The petition is based on the fact that PERSON_8 is accused of committing a criminal offense - a crime provided for in Part 2 of Article 436-2 of the Criminal Code of Ukraine, i.e. in the production and distribution of materials containing the justification, recognition as legitimate, denial of the armed aggression of the Russian Federation against Ukraine, which was launched in 2014, as well as the justification, recognition as legitimate of the temporary occupation of part of the territory of Ukraine and in the commission of a criminal offense - the crime provided for in Part 3 of Article 436-2 of the Criminal Code of Ukraine, i.e. in the production and distribution of materials containing the justification, recognition as legitimate, denial of the armed aggression of the Russian Federation against Ukraine, which began in 2014, including by presenting the armed aggression of the Russian Federation against Ukraine as an internal civil conflict, justifying and recognizing as legitimate the temporary occupation of part of the territory of Ukraine, as well as justifying and recognizing as legitimate the temporary occupation of part of the territory of Ukraine, glorification of the persons who carried out the armed aggression of the Russian Federation against Ukraine, which began in 2014, and committed it repeatedly.

By the decision of the investigating judge of the Kyiv District Court. Kharkiv dated May 1, 2023, PERSON_8 was remanded in custody until June 29, 2023, with a bail amount of UAH 402,600.00, imposed for a period of two

months: to appear before the investigator, the prosecutor, the court at the first summons; not to leave the city of Kharkiv without the permission of the investigator, prosecutor or court; notify the investigator, prosecutor or court about a change of residence at the address: ADDRESS_1; carry an electronic device with a contra.

The ruling of the Kharkiv Court of Appeal dated May 30, 2023 left unchanged the ruling of the investigative judge of the Kyiv District Court of Kharkiv dated May 1, 2023.

The decision of the Dzerzhinsky District Court of Kharkiv dated June 26, 2023 extended the preventive measure in the form of detention, chosen in relation to the accused PERSON_8, until August 24, 2023, with the possibility of applying an alternative preventive measure in the form of bail, in the amount specified in the decision of the investigating judge of the Kyiv District Court of Kharkiv from May 1, 2023, reviewed by the Kharkiv Court of Appeal, namely in the amount of UAH 402,600.00. Upon payment of a certain amount of bail, PERSON_8 shall be released from custody and assigned the following duties for a period of two months: to appear before the investigator, the prosecutor, the court at the first summons; not to leave the city of Kharkiv without the permission of the investigator, prosecutor or court; notify the investigator, prosecutor or court about a change of residence at the address: ADDRESS_1; carry an electronic device backwards; to deposit with the relevant state authorities a passport for traveling abroad or other documents that grant the right to travel abroad.

The accused posted bail, in connection with which he was released from custody on July 6, 2023.

By the decision of the Dzerzhinsky District Court of Kharkiv dated August 4, 2023, the deposit in the amount of UAH 402,600.00, paid by the accused based on the decision of the investigative judge of the Kyiv District Court of Kharkiv dated May 1, 2023, was transferred to the state revenue and credited to the special fund of the State Budget of Ukraine. of the year reviewed by the Kharkiv Court of Appeal in case No. 953/2692/23. A preventive measure in the form of detention until October 2, 2023 without determining the amount of bail was chosen for the accused PERSON_8, INFORMATION_1.

The decision of the Dzerzhinsky District Court of Kharkiv dated August 4, 2023 was left unchanged by the court of appeal.

The decision of the Dzerzhinsky District Court of Kharkiv dated September 12, 2023 extended the preventive measure in the form of detention until November 10, 2023.

The prosecutor supported the demands of the petition and asked to be satisfied. He noted that only a preventive measure in the form of detention can ensure proper procedural behavior of the accused, the risks have not ceased to exist and have not decreased.

Lira PERSON_9 objected to the granting of the petition at the court hearing.

The defender of the accused PERSON_5 objected to the granting of the petition at the court hearing, referring to the fact that the qualification of the prosecution under part 3 of Art. 436-2 of the Criminal Code of Ukraine is unfounded. According to Part 2 of Art. 32 of the Criminal Code of Ukraine, a continuing crime consisting of two or more identical criminal acts committed at different times, united by a single criminal intent, is not a repetition. Taking into account that, the actions that are incriminated against the accused should be qualified as a continuing crime. The prosecutor did not prove the declared risks. He asked to apply a preventive measure to the accused in the form of house arrest or detention with the right to post bail.

When deciding the question of the expediency of extending the term of a preventive measure in the form of detention, the court is guided by the following.

In accordance with part 1, 3 of article 331 of the Criminal Code of Ukraine, during the trial, the court, at the request of the prosecution or the defense, has the right to change, cancel, choose or extend the preventive measure against the accused. If there are motions, during the trial, the court is obliged to consider the feasibility of extending the preventive measure until the end of the two-month period from the day of its application. Based on the results of consideration of the issue, the court, by its reasoned decision, cancels, changes the preventive measure or extends its effect for a period that cannot exceed two months. A copy of the decision is handed to the accused, the prosecutor and sent to the authorized official at the place of imprisonment.

According to Part 2 of Art. 331 of the Criminal Procedure Code of Ukraine, the decision of the court on the preventive measure is made in accordance with the procedure provided by Chapter 18 of this Code.

According to part 4 of Art. 199 of the Criminal Procedure Code of Ukraine, the court is obliged to consider the request to extend the term of detention until the expiration of the previous decision in accordance with the rules provided for considering requests for the application of a preventive measure.

According to Part 3 of Art. 199 of the Criminal Procedure Code of Ukraine, in addition to the information specified in Article 184 of this Code, a request for extension of the term of detention must contain: 1) a statement of circumstances that indicate that the declared risk has not decreased or new risks have appeared that justify the detention of the person in custody; 2) a statement of the circumstances that prevent the completion of the pre-trial investigation before the expiration of the preliminary decision on detention.

The fifth part of Art. 199 of the Criminal Procedure Code of Ukraine stipulates that the court is obliged to refuse to extend the term of detention, if the prosecutor or investigator does not prove that the circumstances specified in the third part of this article justify the further detention of the suspect, the accused.

Thus, the reason for continuing to keep a person in custody is, in particular, establishing that the declared risk has not decreased or new risks have appeared that justify keeping a person in custody.

According to the materials of the criminal proceedings, by the decision of the investigating judge of the Kyiv District Court. Kharkiv dated May 1, 2023, PERSON_8 was placed in custody until June 29, 2023, with a bail amount of UAH 402,600.00.

Choosing the term of preventive measure in the form of detention, the investigating judge took into account that PERSON_8 may hide from the authorities of the pre-trial investigation or the court, destroy, hide or distort any of the things or documents that are of significant importance for establishing the circumstances of a criminal offense, commit another criminal offense.

The ruling of the Kharkiv Court of Appeal dated May 30, 2023 left unchanged the ruling of the investigative judge of the Kyiv District Court of Kharkiv dated May 1, 2023.

The appellate court at the stage of the pre-trial investigation established the validity of the suspicion, the presence of the above-mentioned risks, resolved the question of the legality of the choice of an alternative preventive measure in the form of bail and its size by the investigating judge.

The accused posted bail, in connection with which he was released from custody on July 6, 2023.

By the decision of the Dzerzhinsky District Court of Kharkiv dated August 4, 2023, the deposit in the amount of UAH 402,600.00, paid by the accused based on the decision of the investigative judge of the Kyiv District Court of Kharkiv dated May 1, 2023, was transferred to the state revenue and credited to the special fund of the State Budget of Ukraine. of the year reviewed by the Kharkiv Court of Appeal in case No. 953/2692/23. A preventive measure in the form of detention until October 2, 2023 without determining the amount of bail was chosen for the accused PERSON_8, INFORMATION_1.

The decision of the Dzerzhinsky District Court of Kharkiv dated August 4, 2023 was left unchanged by the decision of the Kharkiv Court of Appeal dated September 11, 2023.

According to Clause 4 Part 2 of Art. 183 of the Criminal Procedure Code of Ukraine preventive measure in the form of detention cannot be applied, except to a previously unconvicted person who is suspected or accused of committing a crime for which the law provides for a punishment of imprisonment for a term of more than five years.

Lira PERSON_9 is accused of committing a minor and a serious crime, which is punishable by imprisonment for a term of up to five years and imprisonment for a term of five to eight years.

The court established that PERSON_8 is married, but is in the process of divorce, has two minor children from 2014 and 2015, is officially unemployed, is not registered with a psychiatrist or narcologist, has no disabilities,

any movable or immovable property in the territory of Ukraine or he has no other state, he lives in Kharkiv in an apartment that belongs to him with the right of use, he has been living in Ukraine since 2017, the children are citizens of Ukraine, they live with their mother in Uzhgorod.

As can be seen from the conclusions regarding the application of legal norms, set out, in particular, in the decisions of the Supreme Court dated 20.06.2019 in case No. 166/313/17, dated 13.08.2020 in case No. 674/1202/19, dated 27.02.2019 in case No. 0503/10653/2012, the awareness of the probability of a person's guilty plea to the charge brought against him and the pressure of the burden of possible punishment are circumstances that indicate the existence of a risk of hiding from the court and are grounds for the application and continuation of a preventive measure in the form of detention.

According to Art. 7-9 of the Criminal Procedure Code of Ukraine, the criminal procedural legislation of Ukraine is applied taking into account the practice of the European Court of Human Rights.

In the decision on the case "W v. Switzerland" dated January 26, 1993, the European Court of Human Rights indicated that taking into account the gravity of the crime has its rational meaning, since it indicates the degree of social danger of this person and allows to predict with a sufficiently high degree of probability his behavior, taking into account that a future conviction for a serious crime increases the risk that the suspect/accused may evade investigation.

According to the practice of the European Court of Human Rights, the seriousness of the accusation is not an independent reason for keeping a person in custody, but such an accusation in combination with other circumstances increases the risk of escape to such an extent that it cannot be averted without taking the person into custody. In the case "Iliykov v. Bulgaria" No. 33977/96 of July 26, 2001, the ECtHR noted that "the severity of the prescribed punishment is an essential element in assessing the risks of concealment or repeated commission of crimes."

In addition, the European Court of Human Rights has repeatedly emphasized that the existence of grounds for detaining a person in custody must be assessed in each criminal proceeding, taking into account its specific circumstances.

Taking into account the identity of the accused PERSON_8, the severity of the punishment that he faces in case of his conviction, the absence of an official source of income and any property on the right of ownership, the presence of two citizenships of other countries, other circumstances of the criminal proceedings, the court comes to the conclusion that at this stage of the criminal proceedings, the risks of the accused taking the actions provided for in clauses 1, 5, part 1 of Article 177 of the Criminal Procedure Code of Ukraine, which were the basis for selecting a preventive measure in the form of detention in relation to the accused at the stage of pre-trial investigation and which were referred to by the prosecutor in the request to extend the preventive measure in the form of detention, did not decrease, nor did any of the other, milder preventive measures, unable to prevent them.

Given the fact that the accused has a passport of a US citizen and a passport of a citizen of the Republic of Chile, the presence of dual citizenships and passports significantly expands the person's ability to hide abroad, in different countries of the world, in order to evade criminal responsibility.

According to the practice of the European Court of Human Rights, the court with its decision must ensure not only the rights of the accused, but also high standards of protection of general societal rights and interests. Ensuring such standards, as emphasized by the European Court of Human Rights, requires the court to be more strict in assessing violations of society's values.

Taking into account the specific circumstances of the crime charged against the accused, namely, that he is accused of committing crimes classified as crimes against peace, human security and international legal order, the court considers that there is an existing public interest in this legal proceeding, which consists in the need to protect high standards of protection of the rights and interests of society.

The court takes into account the fact that the accused, being under the effect of a preventive measure in the form of detention with bail, voluntarily went to the state border of Ukraine with Hungary. While on the territory of

Zakarpattia Oblast in the period from July 31, 2023 to August 1, 2023, the accused made an unsuccessful attempt to cross the state border at the CHOP checkpoint (Tysa).

The fact that the accused attempted to cross the state border objectively indicates the existence of a risk of hiding from the court, and therefore the defense's assertion that there is no evidence of such a risk is unfounded.

When deciding the issue of extending the preventive measure, the court takes into account the presence of risks provided for in clause 1, part 5 of article 1. 177 of the Criminal Procedure Code of Ukraine, as well as assessing the totality of circumstances, namely: the weight of the evidence established by the investigating judge and the court of appeal at the stage of the pre-trial investigation about the commission of PERSON_8 criminal offenses (reasonableness of suspicion); the severity of the punishment that threatens him in the event of being found guilty of a serious criminal offense provided for in part 3 of Art. 436-2 of the Criminal Code of Ukraine, data on the identity of the accused, who is not a citizen of Ukraine, can freely leave the territory of Ukraine, does not have property on the territory of Ukraine and an official source of income, believes that the application in relation to PERSON_8 is more lenient preventive measure is not sufficient to prevent the risks provided for in Clause 1, Part 5 of Article 1. 177 of the CPC of Ukraine.

Taking into account the above, in order to ensure the execution of the procedural duties assigned to the accused, to prevent absconding from the court, the commission of other criminal offenses, the court at this stage of the court proceedings considers it expedient to extend the term of the preventive measure in the form of detention in relation to PERSON_8, for a period of up to January 6, 2023.

Also, taking into account the above, the court comes to the conclusion that at this stage of the court proceedings there are no grounds for changing the preventive measure chosen for the accused.

In addition, the court took into account all grounds and circumstances provided for in Art. 178 of the Criminal Procedure Code of Ukraine, information about the person and available evidence that the accused has committed a criminal offense, the severity of the punishment that threatens him in the event of being found guilty and the circumstances provided for in Art. 177, 178 of the Criminal Procedure Code of Ukraine, according to which the court has the right not to determine the amount of the bail.

According to Part 3 of Art. 183 of the Criminal Code of Ukraine, when passing a decision on the application of a preventive measure in the form of detention, the court is obliged to determine the amount of bail sufficient to ensure that the suspect, accused person fulfills the obligations provided for by this Code, except for the cases provided for in part four of this article.

According to Part 4 of Art. 183 of the Criminal Procedure Code of Ukraine, when passing a decision on the application of a preventive measure in the form of detention, taking into account the grounds and circumstances provided for in Articles 177 and 178 of this Code, the court has the right to determine the amount of bail in criminal proceedings: in relation to a crime committed with the use of violence or threatening use; regarding the crime that caused the death of a person; in relation to a person, in relation to whom a preventive measure in the form of bail was already chosen in this proceeding, but was violated by her; regarding the crime provided for by Articles 255-255 of the Criminal Code of Ukraine; in relation to a particularly serious crime in the sphere of trafficking in narcotic drugs, psychotropic substances, their analogues or precursors. During martial law, the investigating judge, the court, when passing a decision on the application of a preventive measure in the form of detention, taking into account the grounds and circumstances provided for in Articles 177 and 178 of this Code, has the right not to determine the amount of bail in criminal proceedings regarding the crime provided for in Articles 109-114-2,258- 258-6,260,261,402-405,407,408,429,437-442 of the Criminal Code of Ukraine.

By the decision of the Dzerzhinsky District Court of Kharkiv dated August 4, 2023, it was established, and the prosecutor proved the existence of the circumstances provided for in Part 4 of Art. 183 of the Criminal Procedure Code of Ukraine, which are the legal basis for not determining the amount of bail in this criminal proceeding. Namely, the circumstance provided for in Clause 3, Part 4 of Art. 183 of the CPC of Ukraine.

Taking into account the accused's violation of the preventive measure in the form of bail, the court came to the conclusion that there are no grounds for determining the amount of the bail.

The assessment of the specified circumstances indicates that the accused violated the obligations imposed on him by the decision of the Dzerzhynskyi District Court of Kharkiv dated June 26, 2023, that is, preventive measures in the form of bail are not capable of ensuring that the accused fulfills the procedural obligations assigned to him.

Considering the request to extend the preventive measure in the form of detention, the court believes that the preventive measure in the form of house arrest will also not be able to prevent the risks proven by the prosecutor.

According to the results of the analyzed criminal proceedings as a whole, the court came to the conclusion that preventive measures in the form of bail are not capable of ensuring that the accused fulfills the procedural duties assigned to him.

Taking into account the fact that the case is at the stage of judicial review and as of the time of the consideration of the petition by the court, the indictment documents were attached to the case file, the court considers the continued existence of the risk of destruction, hiding or distortion of any of the things or documents that are of significant importance to the prosecutor unproven establishing the circumstances of a criminal offense.

As for the arguments of the defense counsel and the accused regarding the disagreement with the qualification of the indicted criminal offense, at this stage of the trial, these arguments cannot be considered as evidence of the groundlessness of the accusation, the absence of risks established by the court, and the existence of grounds for choosing a more lenient sentence. precautionary measure.

The issue of incorrect legal classification of the crime cannot be resolved before examining the indictment documents when considering a motion to extend the term of the preventive measure. The court is deprived of the opportunity to provide an assessment of the legal qualification of the actions of the accused during the consideration of this petition and at this stage, since the specified arguments are subject to assessment by the court after examining the prosecution documents.

Guided by Art. 34, 183, 314, 331, 369-372 of the CCP of Ukraine,-

RESOLVED:

The request of the prosecutor of the Kharkiv Regional Prosecutor's Office PERSON_7 to extend the term of the pre -trial detention in the form of detention in criminal proceedings, entered in the Unified Register of Pre -trial Investigations under No. 220222220000000618 of April 12, 2022 in respect of PERSON_8, information. 2 Art. 436-2, Part 3 of Art. 436-2 of the Criminal Code of Ukraine - satisfy.

Extend the effect of the preventive measure in the form of detention, chosen for the accused PERSON_8, INFORMATION_1, until January 6, 2024, without determining the amount of bail.

The decision can be appealed in the appeal procedure by submitting an appeal directly to the court of appeal within five days from the day of its announcement. For PERSON_8, the deadline for filing an appeal is calculated from the moment a copy of this decision is delivered to him.

The resolution is subject to immediate execution after its announcement.

Judge PERSON_1

Date of decision	07.11.2023
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